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PUBLIC UTILITY DISTRICT NO. 2 OF GRANT
COUNTY, WASHINGTON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PUBLIC UTILITY DISTRICT NO. 2 OF
GRANT COUNTY, WASHINGTON

Plaintiff.

vs.

PACIFIC GAS AND ELECTRIC COMPANY

Defendant.

Case No. C 07-03243 JSW

Chapter 11 Case

Bankr. Case No. 01-30923 DM

**DECLARATION OF PETER G.
MCALLEN IN SUPPORT OF
PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY
WASHINGTON'S MOTION FOR
(I) WITHDRAWAL OF REFERENCE
OF PROOF OF CLAIM AND
(II) TRANSFER OF VENUE
THEREOF TO THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
WASHINGTON**

DECLARATION OF PETER G. McALLEN

I, Peter G. McAllen, do hereby declare,

1. I am a member in good standing of the State Bar of California and am admitted to practice before all courts of the State. I am a partner at Jones Day, attorneys of record for Defendant Public Utility District No. 2 of Grant County, Washington ("Grant") in the above-entitled chapter 11 case. I submit this Declaration in support of Grant's Motion for (I) Withdrawal of the Reference of Proof of Claim and (II) Transfer of Venue Thereof to the United States District Court for the Eastern District of Washington (docket no. 1). I have personal and first-hand knowledge of the facts set forth in this Declaration and, if called as a witness, I could and would testify competently thereto.

2. On April 22, 2004, Grant instituted an action against the California Independent System Operator Corporation (the "ISO") in the United States District Court for the Eastern District of Washington, seeking payment for the over \$18 million worth of wholesale electric energy that it sold to the ISO at the height of the California energy crisis in November and December 2000. *Public Util. Dist. No. 2 of Grant County, Washington v. California Indep. Sys. Operator Corp.*, Case No. CV-04-129-JLQ (E.D. Wash., filed Apr. 22, 2004). At the time Grant filed that action, the ISO had never identified the specific principals on whose behalf it was acting as agent when it purchased electric energy from Grant.

3. Shortly after Grant initiated the action against the ISO in the Eastern District of Washington, Grant and the ISO jointly moved to stay those proceedings, pending a determination from the Federal Energy Regulatory Commission ("FERC") regarding whether Grant's sales of wholesale electric energy to the ISO in November and December 2000 were subject to FERC jurisdiction and refund liability under a price mitigation plan then being devised by the FERC. Although the FERC did ultimately issue its Order on November 23, 2004, Grant appealed that Order to the United States Court of Appeals for the Ninth Circuit. Accordingly, pursuant to further stipulation of the parties and court order, the Eastern District of Washington action remained stayed. Attached as Exhibit A is a true and correct copy of the December 29, 2004 Order staying the action in the Eastern District of Washington.

1 4. On December 2, 2005, Pacific Gas and Electric (the “Debtor”), Southern
2 California Edison Company (“SCE”), and San Diego Gas & Electric Company (“SDG&E”)
3 (collectively, the “California Utilities”) served a “Claim for Damages” on Grant, claiming
4 entitlement to purported “refunds” for the electric energy that Grant sold to the ISO. Attached
5 hereto as Exhibit B is a true and correct copy of the California Utilities’ “Claim for Damages.”

6 5. On March 1, 2006, Grant brought a motion to temporarily lift the stay in the
7 Eastern District of Washington action for the limited purpose of filing a First Amended
8 Complaint and joining SCE and SDG&E as defendants.

9 6. On March 28, 2006, the Eastern District of Washington court granted Grant’s
10 motion to temporarily lift the stay, and deemed Grant’s First Amended Complaint filed therein.
11 Attached hereto as Exhibits C and D, respectively, are true and correct copies of the Eastern
12 District of Washington’s Order lifting the stay for the limited purpose of allowing Grant to file its
13 First Amended Complaint, and the First Amended Complaint that was deemed filed by Grant on
14 March 28, 2006 in *Public Util. Dist. No. 2 of Grant County, Washington v. California Indep. Sys.*
15 *Operator Corp.*, Case No. CV-04-129-JLQ (E.D. Wash., filed Apr. 22, 2004).

16 7. On June 7, 2007, Grant filed a motion in the Washington District Court seeking to
17 lift the stay and to proceed with the lawsuit there. Attached hereto as Exhibit E is a true and
18 correct copy of that motion and supporting memorandum of points and authorities. On July 26,
19 2007, the Washington District Court granted that motion, finding no need to further delay the
20 action in light of the Ninth Circuit’s decision in *Bonneville Power Admin. v. Fed. Energy*
21 *Regulatory Comm’n*, 422 F.3d 908 (9th Cir. 2005). Attached hereto as Exhibit F is a true and
22 correct copy of that order.

23 8. While the Debtor is among the formerly undisclosed principals that are liable for
24 the ISO’s debt, the Debtor was not named as a defendant in the Eastern District of Washington
25 litigation. The Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy
26 Code on April 6, 2001 in the United States Bankruptcy Court for the Northern District of
27 California (the “California Bankruptcy Court”). On or about August 31, 2001, Grant timely filed
28 proof of claim number 7864 (the “Grant Claim”) in the Debtor’s chapter 11 case on account of

1 the electricity sold to the ISO on behalf of the Debtor and the other California Utilities. Attached
2 hereto as Exhibit G is a true and correct copy of the Grant Claim. On December 22, 2003, the
3 California Bankruptcy Court entered an order confirming the Debtors' Plan of Reorganization
4 (the "Plan of Reorganization"). Attached hereto as Exhibit H is a true and correct copy of the
5 Plan of Reorganization.

6 9. Sections 9.5 and 9.6 of the Plan of Reorganization contain discharge and
7 injunction provisions that prohibit any party from commencing or continuing any action with
8 respect to any claim that arose prior to the Debtor's bankruptcy, other than in accordance with the
9 terms of the Plan of Reorganization. This discharge injunction prohibited Grant from directly
10 naming the Debtor as a defendant in the Eastern District of Washington District proceeding, but
11 Grant still was free to pursue the Grant Claim in the California Bankruptcy Court.

12 10. To date, the California Bankruptcy Court has not taken any action with respect to
13 the Grant Claim. On February 6, 2004, the Debtor filed a motion with the California Bankruptcy
14 Court seeking to extend the time for the Debtor to object to the Grant Claim and certain other
15 claims. Attached hereto as Exhibit I is a true and correct copy of that motion. Specifically, the
16 Debtor sought to extend the time to object to the "ISO, PX and Generator Claims," including the
17 Grant Claim, until such time as the claims become allowed under the terms of the Plan of
18 Reorganization.¹ The Debtor justified this extension on the grounds that virtually all of the issues
19 that would be subject to the Debtor's objection to the ISO, PX and Generator Claims would be
20 resolved through FERC's ruling in the refund proceedings pending at FERC. Grant objected to
21 the requested extension because it believed that FERC did not have jurisdiction over the Grant
22 Claim. Attached hereto as Exhibit J is a true and correct copy of Grant's objection.

23 11. Because the Ninth Circuit had not yet ruled at the time with respect to FERC's
24 jurisdiction, Grant consented to the entry of an order (the "Claim Extension Order") by the
25 California Bankruptcy Court on April 1, 2004 extending the time for the Debtor to object to the

26 ¹ ISO, PX and Generator Claims are defined in the Plan of Reorganization as claims
27 "against the Debtor arising from amounts due to the ISO, PX and various power generators based
28 on the purchase of electricity or ancillary services by the Debtor in markets operated by the PX
and the ISO."

1 ISO, PX and Generator Claims until 90 days after the ISO, PX and Generator Claims become
2 allowed pursuant to the Plan of Reorganization, although such objection to claims was to be
3 “solely so that their allowance or disallowance on the claims docket in [the Debtor’s] Chapter 11
4 Case conforms to the Allowed amount of such Claims as determined by FERC in the FERC
5 Refund Proceedings.” Attached hereto as Exhibit K is a true and correct copy of the Claim
6 Extension Order. In addition, Paragraph 13 of the Claim Extension Order specifically states that
7 the claim objection extension was without prejudice to the right of Grant to seek adjudication of
8 the Grant Claim without regard to the pendency or status of the FERC Refund Proceedings as to
9 any other creditor.

10 12. To date, the Grant Claim remains inactive in the California Bankruptcy Court.

11 13. On March 16, 2006, the Debtor, SCE, and the California Electricity Oversight
12 Board (the “California EOB”) commenced an action in the United States District Court for the
13 Eastern District of California. SDG&E filed a nearly identical complaint on March 21, 2006.
14 Attached hereto as Exhibits L and M, respectively, are true and correct copies of the PG&E
15 Complaint and SDG&E Complaint.

16 14. On March 16, 2007, the United States District Court for the Eastern District of
17 California dismissed the federal complaints for lack of federal question jurisdiction on the
18 grounds that plaintiffs’ claims were essentially rooted in state contract law. Attached hereto as
19 Exhibit N is a copy of the Judgment and Order dismissing those claims.

20 15. Shortly thereafter, on April 9, 2007, the California Utilities and the California
21 EOB filed a virtually identical complaint in the Superior Court of California for the County of
22 Los Angeles. *Pacific Gas and Electric Co. v. Arizona Electric Power Cooperative, Inc.*, Case
23 No. BC369141 (filed April 9, 2007). Attached hereto as Exhibit O is a true and correct copy of
24 that complaint.

25 16. On August 3, 2007, Grant is filing motions to (i) sever and stay the California
26 action as to Grant in favor of the prior action in the Washington District Court, and (ii) quash
27 summons for lack of personal jurisdiction. Pursuant to a briefing and hearing scheduling order
28 entered by the California state court, those motions will be briefed in August and

1 September 2007, with a hearing on September 21, 2007. Attached hereto as Exhibit P is a true
2 and correct copy of that scheduling order.

3 Executed this 3rd day of August, 2007 in Los Angeles, California.

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5 /s/ Peter G. McAllen

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